IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH

S.B. CRIMINAL MISC. PETITION NO.217/2000

Inder Raj Singh **Versus** State

DATE OF ORDER :: 04/10/2007

HON'BLE MR. JUSTICE AJAY RASTOGI

Mr. Anurag Sharma, for petitioner
Mr. Arun Sharma, Public Prosecutor for State

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Instant petition has been filed assailing the remarks which learned trial Judge has recorded in his order dated 25th March, 1988 which came at the stage of framing of charge against accused.

Petitioner was Investigating Officer in regard to FIR No.298/97 which was registered for offence u/ss.436 & 427 IPC and u/s.3/4 of Prevention of Damage to Public Properties Act. When the matter was being heard by learned trial Judge for framing of charge, it was observed that no material came on record by which inference can be drawn of accused committed offence of Sec.436 IPC and thus, accused was arrested only by invoking Section 436 IPC being non-bailable which infact was not made out on the basis of material came on record. Thus, before proceeding any further, he was of the opinion that a notice be issued to petitioner who was the Investigating Officer as to in what circumstances challan was filed against accused of offence u/s.436 IPC. In

addition to it, it was further observed that with respect to gross irregularity committed by him, a separate letter be sent to the Director General of Police for necessary action. Petitioner basically is aggrieved by the remarks which has been recorded under order impugned. The extract of it, which is relevant, is reproduced hereunder:

> "एस.एच.ओ. इन्द्रराज सिहं बागरिया द्वारा इस प्रकरण में अनुसंधान में की गई घोर लापरवाही व विधि विरूद्ध कार्य के लिए महानिदेशक पुलिस, राजस्थान को अलग से विस्तृत तथ्यों को बताते हुए पत्र भेजा जावे।"

Counsel submits that what has been observed by learned trial Judge in order impugned is in clear violation of principles of natural justice and he has not been afforded any opportunity which is the minimum requirement of person being heard before recording such remarks which may cause prejudice to him.

I have considered the submissions of counsel for parties and perused the order impugned.

So far as alteration with regard to offence which was taken note of by Investigating Officer i.e. petitioner from Sections 435 to 436 IPC is concerned, learned trial Judge has not made any observation, but has considered appropriate to call upon the explanation from petitioner. As such, no opinion at this stage can be expressed since he has called upon his explanation and

which certainly has fulfilled the minimum requirement of compliance of natural justice. But, at the same time what has been further observed by learned trial Judge in order impugned for referring the matter to the Director General of Police with regard to gross irregularity committed by him certainly was not required to be referred since in the absence of his explanation being called for and examined, such observation was not required to be recorded and certainly that has caused prejudice to petitioner. Consequently, the remarks since has been recorded without affording opportunity to him, deserves to be set aside.

Accordingly, the misc. petition stands partly allowed and the remarks [supra] under order impugned dated 25th March, 1998, are hereby expunged.

[AJAY RASTOGI],J.